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From:

Sent: Wednesday, November 04, 2009 4:36:34 PM

To:

Cc:

Subject: Counsel Assistance

I wanted to summarize what we just discussed regarding the rules for securities traders who want to make the mark-to-market accounting method change pursuant to section 475. Revenue Procedure 99-7 describes the specific procedures for making the mark-to-market accounting method change. But in a nutshell, two documents were required from your taxpayers -- an election statement and a Form 3115.

Election Statement

The election statement must be attached to a timely-filed return (or an extension of time to file) for the taxable year prior to the year of change. The statement must describe (1) the requested election, (2) the first taxable year for which the election is effective, and (3) the trade or business for which the election is made. In the case of your taxpayers, they were seeking to make the election effective for . So they should have filed an election statement by , with their tax return (or an extension of time to file). They did not file any election statement.

Form 3115

Form 3115 must be filed with the tax return for the year of change. In the case of your taxpayers, their Form 3115 was due by when filing their tax return in order to be effective for . While your taxpayers did submit Form 3115 timely, they did not submit an election statement. And an election statement is a required component.

You also asked whether relief might be available under Treas. Reg. 301.9100-3. While your taxpayers can request relief under that provision, they would need to submit a request for a private letter ruling and pay a user fee. The user fee schedule is in Rev. Proc. 2009-1 (generally \$4,000, but there is a reduced user fee of \$625 in certain circumstances). Note that the user fee schedule is republished each January and it is possible that the fees may be increasing. So if the taxpayers wish to pursue a private letter ruling, they need to be sure to include the appropriate user fee. Keep in mind, however, that there is no guarantee that the taxpayers will receive relief under Treas. Reg. 301.9100-3, as the requirements for accounting method regulatory elections are generally strictly construed.

In responding to your inquiry, I discussed with in the of the Office of Chief Counsel, as she had originally handled the taxpayers' case.

Please do not hesitate to call me with any additional questions.